



November 15, 2023
DRS Appeal Deadlines

COMPREHENSIVE REPORT

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ISSUE STATEMENT

Some LEOFF 2 members have missed their deadline to file an administrative appeal with DRS and expressed concerns regarding a lack of clarity on the deadline.

OVERVIEW

Recently there have been two instances of LEOFF 2 members missing the deadline to appeal a DRS administrative decision. During the 2023 legislative session there was a bill which in part sought to remedy this issue by extending the deadline to file an appeal and requiring tolling of the deadline when DRS requests the member provide additional records in support of their appeal.

BACKGROUND AND POLICY ISSUES

Background

The Administrative Procedures Act (APA) sets the minimum agency requirements for adjudicative proceedings. Regarding the deadline to file an appeal of an agency decision, the APA reads: "The agency shall allow at least twenty days to apply for an adjudicative proceeding from the time notice is given of the opportunity to file such an application."

The process of requesting an administrative appeal with DRS is typically a multi-step process. The first step of that process is requesting an administrative decision. There is no deadline for a member to request an administrative decision. An administrative decision is usually signed by a Plan Administrator at DRS. Administrative decisions for members typically are made within the Retirement Services Division and administrative decisions impacting employers are made by the Employer Support Division. Earlier this month DRS began a reorganization splitting what has traditionally been the Retirement Services Division into two separate divisions: Member Experience Division, and Member Operations Division.

Once a member receives an administrative decision, they must “Petition” that decision before they can request an administrative appeal. The administrative decision issued by the Plan Administrator includes language identifying the deadline to file what is called a Petition:

If you believe this decision was reached in error or you have new information that was not available when the Administrative Decision was made, you have a right to file a petition asking for further review. Your petition must be filed within 120 days from the date you receive this decision. For information about the petition process, including a description of the information you must include in your petition, you should review Ch. 415-04 WAC. Send your petition to: Petitions Coordinator, Department of Retirement Systems, PO Box 48380, Olympia, WA 98504-8380 or email your petition to: drs.petitions@drs.wa.gov.

The Petition process is not required by the APA and has been put into rule by DRS.¹ Members have 120 days to file a Petition. A Petition is similar to an alternative dispute resolution process, designed to help resolve issues in a format that is intended to be less formal and easier for members without legal representation to navigate. Instead of filing legal motions and briefs, the member can simply provide a letter to the Petition’s Officer explaining their situation and why they believe DRS has erred in their administrative decision. The member can also provide additional records that support their case. DRS has given a 120-day deadline to help facilitate a more collaborative process of assisting members with gathering records and providing information to the Petitions Officer. This process helps DRS ensure they are making the legally correct decision, while also helping the member better understand why DRS has reached their conclusion.

The DRS Petition decision includes the following language identifying that the member has 60 days to file an administrative decision:

YOU HAVE THE RIGHT TO APPEAL THIS DECISION

If you disagree with this petition decision, you may file an appeal with the DRS Presiding Officer within 60 days of the date of this decision. DRS must receive your notice of appeal within that 60-day timeframe. The DRS appeal rules are in chapter 415-08 WAC. For questions about the appeal process, contact the DRS Presiding Officer at (360) 664-7294.

Send your notice of appeal ATTN: DRS PRESIDING OFFICER using one of the following methods:
Mail: **Department of Retirement Systems / PO Box 48380 / Olympia, WA 98504-8380**

¹ Chapter 415-04 WAC

In addition to this notice regarding the right to appeal an administrative decision, the information is available on the DRS website at <https://www.drs.wa.gov/sitemap/appeals>.

Policy Issues

During the 2023 legislative session SB 5625 was proposed. This bill sought to address multiple concerns, including instances where LEOFF 2 members missed their deadline to file an appeal with DRS. If passed, SB 5625 would have:

- Increased the deadline to file an appeal from 60 days to 90 days;
- Allowed for tolling no less than 90 additional days when DRS requests additional records from members; and,
- Allowed retirees to refile a claim that previously dismissed for failing to file a timely notice after additional information was requested.

SB 5625 received a public hearing in the Senate Ways and Means Committee but did not move forward to executive action in the committee.

In the last 5 years DRS has received 75 petition requests, 25 of those were from LEOFF 2 members. None of those petitions were denied for not being filed timely. In the last 5 years DRS has received 37 appeal of petition decisions, 14 of those were from LEOFF 2 members. There is only one instance of a member being denied an appeal based on missing the deadline to file the appeal; that member was in LEOFF 2. This denial for timeliness was appealed by the member to the Court of Appeals, where the department's dismissal for untimeliness was upheld. There is an additional case that is currently with the DRS Appeals Officer with the issue of whether it was filed timely; that member is also in LEOFF 2.

POLICY OPTIONS

Option 1: Require tolling

This option would toll the time to file an appeal when DRS requests the member provide additional information.

Option 2: Extend time to file an appeal to 120 days

This option would extend the time members have to file an appeal, which is a minimum of 20 days under the APA (currently 60 days in DRS WAC), to match the time members must file a petition of administrative decision (currently 120 days in DRS WAC).

Option 3: Both Option 1 and 2



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Issue

- **Some LEOFF 2 members have missed their deadline to file an administrative appeal with DRS and expressed concerns regarding a lack of clarity on the deadline**

Administrative Procedures Act

- **Minimum of 20 days to file an appeal**
 - No tolling required
- **Superior Court (30 days to file)**

DRS's APA Process

- Initial decision from DRS (member or employer)
- Administrative decision (no deadline to file)
- Petition decision (120 days to file)
- Appeal decision (60 days to file)

History

- **60-day timeframe to file an appeal has been in place since at least 1993**
- **120-day timeframe to file a petition has been in place since 2001**

DRS Data

- In the last 5 years how many petitions has DRS received? 75 (25 LEOFF 2)
- How many of those petitions were denied for not being timely? 0
- In the last 5 years how many appeals of petition decisions has DRS received? 37 (14 LEOFF 2)
- How many of those appeals were denied for not being timely? 2

Policy Options

- 1. Require tolling**

This option would toll the time to file an appeal when DRS requests the member provide additional information

- 2. Extend time to file an appeal to 120 days**

This option would extend the time to match the current DRS petition deadline

- 3. Both option 1 and 2**

Pros/Cons - Options 1 and 2

- **Pros**

- Gives members, employers, and DRS more time to get all the necessary information
- Help prevent members/employers from missing deadline

- **Cons**

- Concerns may be dealt with in rule-making or changes to procedure instead of law

Next Steps

1. Motion for final briefing on:
 - Option 1 - Tolling
 - Option 2 - 120 days
 - Option 3 - Both
2. No action



Thank You

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